Kansas Health Policy Authority
Coordinating health & health care for a thriving Kansas

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KHPA Report: Provider Tax on Nursing Facilities

As Presented to the KHPA Board, January 22, 2008

Executive Summary

At the November 2007 KHPA Board meeting, Board members heard opposing views on the merits of a nursing facility provider tax through the Kansas Medicaid program from the executive directors of the two nursing facility trade associations: the Kansas Association of Homes and Services for the Aging; and the Kansas Health Care Association. Although nursing facility provider tax proposals have been introduced in the last three legislative sessions, this was the first opportunity for the full KHPA Board to hear these views as presented by these interest groups.

During the discussion that followed at the November meeting, KHPA Board members raised questions about the impact of implementing a nursing facility provider tax in Kansas from the perspective of the State and requested that additional information be prepared for today's meeting. As the agency with responsibility for policy-making decisions for senior care and services, KDOA was contacted and, in collaboration with their staff, this report was prepared in response to the Board's request for additional information. An additional presentation is being made today by KDOA and Myers and Stauffer Consultants (rate-setting methodology consultants) which will provide specific information on: 1) the current nursing facility reimbursement methodology and 2) an analysis of the impact of a provider tax specific to nursing facilities.

KHPA Staff Recommendation:

As the Medicaid single state agency and the agency charged with developing and maintaining a coordinated health policy agenda, KHPA works closely with the Kansas Department on Aging (KDOA) and the Kansas Department of Social and Rehabilitation Services (SRS). While KDOA and SRS are responsible for policy development and implementation as well as administering Medicaid-funded programs and services, the role of KHPA as directed by statutory authority is to provide oversight of the Kansas Medicaid program and ensure compliance with federal and state Medicaid requirements including those related to provider taxes.

The KHPA staff recommendation is to defer to the policy leadership of KDOA in matters of long-term care and continue to work collaboratively with Aging staff to provide necessary resources in order for that agency to make an informed decision about this issue. Should KDOA consider supporting a health related tax on nursing facilities, KHPA staff recommends that the tax should be part of a broader strategic plan for improving quality and access to long term care services in Kansas.

Background on Health Care-Related Taxes

History. A "provider tax," also called a "fee" or "assessment," can be imposed on providers by states to increase the revenue available for Medicaid federal financial participation (FFP). Federal law (42 CFR 433 and Section 1903(w) of Title XIX of the Social Security Act) allows for this option. The federal law permits states to generate new sources of state funds through provider contributions and match them with federal funds to increase Medicaid payments. In most states, the proceeds from the tax are returned to providers by increasing the Medicaid reimbursement rates.

States have the option of taxing most types of health care providers and services. However, the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991, limit the amount of FFP available for Medicaid programs when states use funds donated by providers and revenues generated by certain health-care related taxes as state matching funds.

Requirements. To be eligible for federal matching funds, health care-related taxes must:

- be imposed on a permissible class of health care services;
- be broad based or apply to all providers within a class;
- be uniform, such that all providers within a class must be taxed at the same rate; and
- avoid hold harmless arrangements in which collected taxes are returned directly or indirectly to taxpayers. If taxes imposed are 5.5% or less of revenue, funds can be returned in the form of a Medicaid payment.

Waivers. If a provider tax does not meet the standards established in law for being "broad based" or "uniformly imposed," a state may seek a waiver from these requirements. If a state applies for such a waiver, it must demonstrate that the net effect of the tax and associated expenditure is redistributive in nature, the amount of the tax is not directly correlated with Medicaid payments, and the tax does not violate hold harmless provisions.

The permissible class of health care services and hold harmless requirements cannot be waived. There are 19 permissible classes of health care providers or services that States can tax without triggering a penalty against Medicaid expenditures (42 CFR 433.56).

State statistics. According to a National Conference of State Legislatures report, dated November 19, 2007, by the end of FY 2007, 43 states and the DC will have at least one provider tax. Of those, 33 have taxes on nursing facilities.

Kansas' Long Term Care System - Overview

Long Term Care Costs in Kansas. According to the Legislative Division of Post Audit report of April 2007, government-funded health-care related programs in Kansas spent nearly $6 billion during 2006. State-administered programs accounted for about $2.5 billion in spending – $1.6 billion on health-care programs, **and $0.8 billion on long term care.** (emphasis added)

Long term care spending of $0.8 billion translates into $844 million spent during fiscal year 2006 for state-administered long term care programs, or approximately 34% of total state administered expenditures. Of the $844.0 million, almost half of the expenditures, or $413.8 million, were spent on "Inpatient-Based" care or institutional care. The bulk of the $413.8 million, $318.9 million, was spent on nursing facility care. Community based services account for the remaining $430.6 million.

Impact of a Nursing Facility Provider Tax

A key question to consider if a provider tax were to be imposed in Kansas for nursing facility care services is what the impact would be on the other multiple "moving parts" of the long term care system. The nursing facility program is one component of the long term care system, encompassing other types of adult care homes, hospital-based long term care units, home health agencies, home and community based services (HCBS) agencies, case management organizations, payroll agencies, and state institutions. KDOA has provided for us today information on the impact of a nursing facility provider tax on Kansas Medicaid rates and the reimbursement of the costs of institutional care. Nationwide there is experience and research on developing and implementing a provider tax on nursing facility care services. However, additional research is needed to determine the unintended consequences, the impact on the long term care system, and the benefits gained from imposing a nursing facility provider tax. Areas to be given special consideration include:

1. Impact on quality of services and access to care. These components should be considered as part of a broader strategy for improving long term care services. What quality of care measures would be most appropriate when tied to an increase in provider reimbursement?
2. Impact on payer source. How would a nursing facility provider tax impact the mix of private and pay and Medicaid payer sources? Would increasing Medicaid rates with provider tax funds create an increased burden or be passed through to the cost of private pay residents?
3. Impact on HCBS and Institutional care. Do states use nursing facility provider tax dollars to support community based services programs? Would an increase of Medicaid nursing facility reimbursement rates create an incentive to increase the number of institutional beds?

This is not an exclusive list of issues surrounding the option of designing and implementing a nursing facility provider tax. The concerns are illustrative of questions that should be considered prior to recommending the adoption of a nursing facility tax.

Coordinated Health Policy Agenda

A health care related tax on nursing facilities should be part of a broader strategic plan for improving quality and access to long term care services for Kansans. While there have been discussions within KDOA and SRS regarding rebalancing the long term care system between institutional and community based care, to date KHPA has not directly engaged those issues simply due to demands on staff time. Additionally, with the priority of the KHPA this past year being health reform, the Board will use time at their annual 2008 Retreat to discuss agency priorities and initiatives for 2009 and beyond. Plans are being made to have long term care reform as part of that discussion. Lastly, the KHPA has received minimal input and feedback from stakeholder groups regarding the long term care system and a potential nursing facility provider tax, and there appears to be significant differences amongst long term care providers.

Staff Recommendations

As previously stated, the role of KHPA as directed by statutory authority is to provide oversight of the Kansas Medicaid programs and ensure compliance with federal and state Medicaid requirements including those related to provider taxes. There have been a number of occasions which required on-going collaboration between KHPA, KDOA and SRS, with respect to policy development and implementation. With this issue, it is the KHPA staff recommendation to defer to the policy leadership of KDOA in matters of long-term care and continue to work collaboratively with Aging staff to provide necessary resources in order for that agency to make an informed decision about this issue. Should KDOA consider supporting a health related tax on nursing

facilities, KHPA staff recommends that the tax should be part of a broader strategic plan for improving quality and access to long term care services in Kansas. KHPA will report back to the Board once a decision has been determined.